BOONSOM BOONYANIT

v.

ADORNA PROPERTIES SDN. BHD. (2)

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[ORIGINATING SUMMONS NO. 24-554-89]
27 DECEMBER 1989

LAND LAW: *Registrar's caveat - Whether Court has jurisdiction to order injunction against the Registrar of Titles - Whether Court can order registrar to enter registrar's caveat - Government Proceedings Ordinance 1956, s. 29(2) - Specific Relief Act 1950, s. 54(d) - National Land Code 1965, s. 417(1).*

On 7 December 1989, the Court dismissed the respondent's contention that the injunction issued against the Registrar of Titles Penang contravened s. 29(1) of the Government Proceedings Ordinance 1956. On 22 December 1989, however, after having heard further arguments of Counsel and after having considered the provisions of s. 29(2) of the said Ordinance together with s. 54(d) of the Specific Relief Act 1950 and established authorities, the Court held that it had no jurisdiction to issue the injunction against the Registrar restraining him from registering any instrument of dealing in respect of the land in dispute. That being so, the Court ordered the injunction against the registrar to be discharged.

The remaining question to be resolved by the Court was whether the Court can, on its own volition, order the registrar to enter the registrar's caveat.

Held:

Section 417(1) of the National Land Code 1965 vests the power in the High Court to direct the registrar by order to enter the registrar's caveat. As the registrar's caveat was necessary to prevent fraud or improper dealing in respect of the land in dispute, the application by the applicant was properly made and the caveat should remain until final determination of the dispute.

[Caveat to remain in force.]

Cases referred to:

Law Kiat Long v. Pardons Board, Johore [1968] 2 MLJ 249
Sungei Biak Tin Mines v. Saw Choo Theng & Anor. [1970] 2 MLJ 226
Seet Soh Ngoi v. Venkateswara Sdn. Bhd & anor [1976] 1 MLJ 242
AR. PL. Palaniappa chettiar v. AR. Letchumanan Chettiar & anor

Legislation referred to:

Government Proceedings Ordinance 1956, s. 29(2)
National Land Code 1965, s. 417, s. 417(1)
Rules of the High Court 1980, O. 56, r. 2(2)
Specific Relief Act 1950, s. 54(d)

For the applicant - Gerad Chan Weng Yew; M/s. Lim Kean Siew & Co.
For the respondent - Ghazi Ishak; M/s. Presgrave & Matthews

JUDGMENT

Mohamed Dzaiddin J:

On 22 December 1989 I heard further arguments of Counsel under O. 56 r. 2(2) Rules of the High Court.

After hearing Counsel, I concede and hold that this Court has no jurisdiction to order an injunction against the Registrar of Titles, Penang restraining him from registering any instrument of dealing in respect of the land in dispute in this originating summons. I make this order after considering s. 29(2) Government Proceedings Ordinance 1956 read together with s. 54(d) Specific Relief Act 1950. In addition, I was also referred to the decision of Ali Hassan J in *Law Kiat Long v. Pardons Board, Johore* [1968] 2 MLJ 249 where it was held that the Court has no jurisdiction to entertain a claim for an interim injunction in view of the respective sections of the above-mentioned statutes. Thus, in the light of clear authorities, the first limb of my order given on 14 July 1989 granting an injunction against the Registrar of Titles Penang shall now be discharged.

On the question of the entry of the Registrar's Caveat, Encik Ghazi submitted that on a proper reading of s. 417 National Land Code, the Court cannot on its own volition, act by ordering the registrar to enter the Registrar's Caveat against the said land. The Registrar must first be given an opportunity to consider the application at first instance and if he refuses the registration, only then he could apply to this Court under s. 417. In short, Encik Ghazi's argument appears to hinge on the question of the prior order before the Court could direct the Registrar to do all such things as may be necessary to give effect to his order. Encik Ghazi relied on *Sungei Biak Tik Mines v. Saw Choo Theng v. Anor.* [1970] 2 MLJ 226 where the Federal Court invoked s. 417 in directing the Collector to delete the registration of the sub-lease in favour of the sub-lease in favour of the sub-lessee and instead reregister it in the name of the appellant company.

After considering Encik Ghazi's submission and the Federal Court decision in *Sungei Biak Tin Mines Ltd.* (*supra*), I am afraid I have not been persuaded to have any second thought about the power of this Court to direct by order the Registrar of Titles. Penang to registrar the Registrar's Caveat which I ordered on 14 July 1989 in the absence of the Registrar who was not a party in this originating summons. Section 417(1) vests the power in the High Court in direct by order to register to carry out or give affect to any order given or made in any proceedings relating to land. I must confess that Encik Ghazi's submissions has forced me to reexamine the ratio in *Seet Soh Ngoi* and *AR. PL. Palaniappa Chettiar*. However, after further consideration, I find that Mr. Wong Kim Fatt JC in *AR. PL. Palaniappa Chettiar* at p. 234 had extensively dealt with the points raised by Encik Ghazi. Short of repeating myself I would like to reiterate I respectfully concur with the learned Judicial Commissioner's judgment.

Therefore, for the reasons stated above, I confirm my earlier decision that in the circumstances of the whole case the Registrar's Caveat was necessary in order to prevent fraud or improper dealing in respect of the said land and that the application was properly made. The caveat should thus remain until the final determination of Civil Suit No. 22-401-89.

No order as to costs.

Also found at [1990] 2 CLJ 978